

REMARKS

The Official Action of June 29, 2005 noted an irregularity in the claim to the earlier effective filing date of the prior applications listed in the specification under 35 U.S.C. 120 and objected to the declaration executed by the Applicant for the same reason. Claim 1 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and claim that which Applicant regards as the invention, and claims 1 and 2 were rejected under 35 U.S.C. 102 as being anticipated by the Hedman, *et al.* and Buttermann patents.

Responsive to the objection to the specification and the claim to earlier effective filing dates, Applicant has amended the specification as set out above to delete the entire first paragraph (referencing the prior applications) and hereby withdraws the claim to the earlier effective filing date of the applications/patents listed in that paragraph. Responsive to the objection to the Declaration, it had been intended to submit a fresh declaration with this Response that did not list these prior applications and did not claim the benefit of their earlier filing dates under §120, but due to an oversight by the below-signed Attorney for Applicant in sending the fresh declaration to Applicant, the fresh declaration has not yet been executed and could not be included with this Response. It is respectfully requested that this objection to the declaration be held in abeyance until a fresh declaration is submitted, which is expected shortly.

Responsive to the §112 rejection of claim 1, that claim has been extensively amended to remedy the obvious typographical error of referring to two locks. Withdrawal of the §112 rejection of that claim is therefore requested.

Having amended claim 1 in response to the §112 rejection, the basis for traversing the §102 rejection of that claim is clear. As amended, claim 1 recites “a lock having a bearing surface formed thereon for mounting to one end of said implant with the bearing surface of said lock contacting an adjacent vertebrae to resist rotation of said implant.” Neither of Hedman nor Buttermann shows such structure – indeed, Applicant is unable to find any indication that the apparatus shown in either reference has the claimed substantially rectangular cross section such that there is no reason to resist rotation of the apparatus shown in those references and neither reference would have any reason to disclose a lock that functions to resist rotation. Nor does either reference disclose an implant with ends to which a lock is mounted as recited in claim 1 (and note that both features were recited in original claim 1 such that it is clear that the amendment made to remedy the §112 rejection is not being made for the purpose of overcoming the §102 rejection). Reconsideration and withdrawal of the §102 rejection of claim 1 is respectfully requested in light of these structural differences.

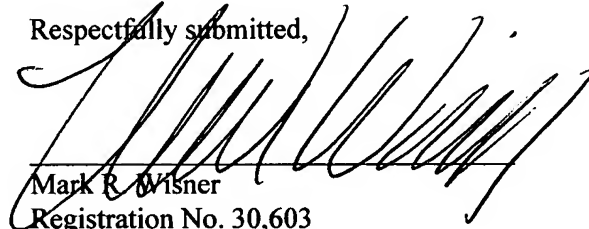
Amended claim 2 recites that the implant is inserted into the intervertebral disk space and then rotated so that sides of maximal dimension contact the adjacent vertebrae. Neither

Hedman nor Buttermann disclose this step of rotating the implant in the intervertebral disk space, and because neither reference discloses rotation in the intervertebral disk space, they certainly cannot disclose the claimed step of "restraining the implant against further rotation." Reconsideration and withdrawal of the §102 rejection of claim 2 in light of these differences is respectfully requested.

New claims 3-27 have been added to more completely claim that which Applicant regards as his invention. It is submitted that new claims 3-27 are likewise allowable over the cited Hedman and Buttermann patents.

Entry of the above amendments and new claims 3-27, consideration of the remarks set out herein, allowance of the claims, and passage of the application to issuance are all respectfully requested. In the unforeseen event that there are questions and/or issues yet to be answered in this application, it is respectfully requested that Applicant's Attorney be contacted at the address and phone number set out below.

Respectfully submitted,



Mark R. Wisner

Registration No. 30,603

1177 West Loop South, Suite 400

Houston, Texas 77027-9012

Telephone: (713) 785-0555

Facsimile: (713) 785-0561

ATTORNEY FOR APPLICANT(S)

Date: October 31, 2005